IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 251 OF 1996

Shri Suresh Ramchandra Khatkar.. Petitioner

versus

1. Chief Executive Officer,
Zilla Parishad, Kolhapur

2. Govind Ramchandra Talekar
C/o Talekar Travels, 1858 E Ward,
Hira Apartment, Rajarampuri,Kolhapur
..Respondents

Mr.N.V.Bandiwadekar for Petitioner

Mr.S.R.Nargolkar, Assistant Government Pleader
for Respondent no.1

Mr.M.S.Topkar for Respondent no.2

CORAM : S.B.MHASE AND
D.G.KARNIK, JJ

DATED : 2nd February, 2006

P.C.

1. The petitioner was appointed as an office assistant initially on daily wages basis by the respondent no. 1 on 11th April, 1965. Thereafter, the respondent no.2 was appointed as a cook by the respondent no.1 in the year 1969. There was one vacancy in the sanctioned post of an office assistant. As per the Government Circular dated 22nd August, 1984 the appointment in the

regular sanctioned post of the office assistant was to be made from the persons who were appointed on daily wage basis. In view of the said circular, the petitioner was appointed to the sanctioned post of an office assistant on 29th July, 2005 with effect from 22nd August, 1984. The respondent no. 2 challenged the said appointment before the Industrial Court, Kolhapur contending that he was senior to the petitioner. The Industrial Court held that the respondent no.2 was senior to the petitioner and therefore the respondent no.2 was appointed to that post and the petitioner was reverted to the post of a daily wager.

2. Sometime prior to 1991 disciplinary proceedings were against the respondent no. 2 to inquire into certain charges of misconduct. The respondent no.2 was held guilty and by an order dated 29th July, 1991 the penalty of dismissal was imposed on the respondent no.2 with effect from 15th February, 1988. We are informed that the respondent no.2 has challenged the said punishment in the Labour Court, Kolhapur and the proceedings are presently pending in the Labour Court.

3. Mr.Bandiwadekar, learned counsel for the petitioner submitted that in the event the

dismissal of the respondent no. 2 is upheld by the Labour Court, the sanctioned post of an office assistant would become vacant with effect from 15th February, 1988 and if the petitioner is appointed to that post with effect from 15th February, 1988 till the date of his retirement, the petitioner would be satisfied and would not press for any further reliefs from this petition. Mr. S.R.Nargolkar, learned Assistant Government Pleader appearing for the respondent no.1 on instructions from the Chief Executive Officer who is present in the Court states that the respondent no.1 has no objection for granting this relief of appointment of the petitioner to the sanctioned post of an office assistant with effect from 15th February, 1988 subject to the order of dismissal of the respondent no. 2 not being set aside by the Labour Court or from any superior Court in any proceedings arising out of the original proceedings in the Labour Court. The respondent no. 2 obviously cannot have any objection to this because, the rights of the respondent no. 2 are not affected and the petitioner would be appointed to the post only if his dismissal is not set aside.

4. In our view, by granting the reliefs as prayed for now, no financial loss would be caused to the

respondent no.1 because, it would not be required to pay the salary in the pay scale of an office assistant to two persons as it would be required to pay salary only to the petitioner or the respondent no.2 as the case may be.

5. For these reasons, we pass the following order:

> " Subject to the final order that may be passed in the proceedings challenging the dismissal of the respondent no. 2 and subject to the respondent no.2 not being reinstated with back wages in the post of an office assistant in the said proceedings, the respondent no.1 shall appoint the petitioner in the sanctioned post of an office assistant with effect from 15th February, 1988 and pay him difference in the salary between the pay scale of a regular office assistant and the salary paid to him as a daily wager till the date of his retirement. The petitioner shall be paid all the benefits as a regular employee with deemed effect of confirmation with effect from 15th February, 1988. All consequential benefits including pensionary benefits shall also be granted to the petitioner.

(D.G. KARNIK, J) **(S.B.MHASE, J)**